

Intellectual Property Policy – University of Plymouth

(February 2016)

Intellectual Property - what is it and why is it important to me and the University?

Ideas originated or created by staff and students of the University of Plymouth (“the University”), including its subsidiary companies, may be or may become Intellectual Property (referred to here as IP).

Intellectual property, or IP, and the rights associated with them, Intellectual Property Rights, or IP Rights, underpin the relationships, projects, partnerships, collaborations and contracts that the University is able to enter into with third parties.

In this policy the term ‘Intellectual Property’ or ‘IP’ relates to the invention or creation of the intellectual asset.

IP is an asset that potentially has value, and must be managed and protected effectively. Owners of IP have rights in relation to their IP, and through careful management, the exploitation and commercialisation of that IP can enhance dissemination of research results, provide a method for social improvement and generate income for the University and its employees. Fundamentally, having the right type of IP protection helps you to stop people stealing or copying:

- the names of your products or brands;
- your inventions;
- the design or look of your products; and
- things you write, make or produce.

‘IP Rights’ means - patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, plant variety rights, rights in designs, rights in computer software, database rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Introduction:

What does this policy do?

This document sets out the University’s policy for the ownership, development, protection, use and exploitation of IP, and the sharing of net revenue with staff and students who generate income from IP Rights.

What is this policy for?

IP is an asset that might have value, and the University has a responsibility to protect its assets and manage them effectively.

This policy aims to:

- a. encourage and assist with the identification of IP;
- b. set out the University procedures surrounding the identification, ownership, protection and commercialisation of IP Rights;
- c. assist in:
 - developing commercial projects using IP Rights, and
 - pursuing suitable exploitation routes using IP Rights;
- d. provide financial incentives for individuals, schools and faculties, arising from the exploitation of any IP Rights that generate income;
- e. ensure that the University is able to meet its contractual obligations to third parties; and
- f. prevent the infringement of IP Rights held by others.

Who is responsible for it?

The University's policy is maintained by the University's Research & Innovation Directorate and is approved by the Research & Innovation Committee on behalf of the Academic Board.

When is it effective from?

This policy is effective from February 2016.

1. Ownership of IP

It is important to identify who owns relevant IP, before any further steps can be taken in relation to commercialisation or exploitation. Ownership is determined by reference to legislation and case law, the creator's status and contractual obligations.

1.1 Employed Staff

Under English law, ownership of IP created by employees in the course of their employment generally belongs to the employer, if they are made by an employee in the course of the employee's duties. Therefore, as a general principle, the University of Plymouth owns all IP Rights created by its employed staff.

More specifically:

An invention or other IP made or created by an employee of the University shall be taken to belong to the University if:

- it was made in the course of the normal duties of the employee or in the course of duties falling outside his normal duties, but specifically assigned to him, and the circumstances in either case were such that an invention or IP might reasonably be expected to result from the carrying out of his duties; or
- the invention or IP was made in the course of the duties of the employee and, at the time of making or creating the invention, because of the nature of his duties and the particular responsibilities arising from the nature of his duties, he had a special obligation to further the interests of the employer's business or activities - as with academic research at the University.

Any other invention or IP made by an employee which does not satisfy either of the above tests, and is not otherwise covered by a contractual obligation, shall belong to the employee.

The above principle is further detailed in **Appendix A (Inventions, Patents, Copyright and Post Termination Restrictions)** of the University's [terms and conditions of employment](#).

The University seeks to support and encourage employees who create IP in the course of their normal duties that has commercial and/or academic value. As a general principle, employed staff will therefore be eligible to receive support advice and assistance from the University and to share the benefits generated from exploitation of the IP Rights created by them in the course of their employment following the principles laid down in this policy (see **Commercialisation and Exploitation** below).

Scholarly Works:

As a general principle, the University owns the IP Rights in any teaching materials created by employees of the University and used, or intended for, the delivery of courses. Examples of such materials include, course books, course manuals, case studies, lecture slides, multi-media works (including podcasts and webcasts), tutorial papers, model answers, examination materials and software. However, the University will not normally assert ownership or ask for assignment of the copyright in certain academic/scholarly material, such as:

- Journal articles, conference papers, presentations etc;
- Notes for employees' personal use (not including laboratory notebooks) ;
- Theses and dissertations;
- Works of Art, novels, poems etc; or
- Books.

This list is not exhaustive and all employees should be careful to check any third-party commitments relating to these works at all times.

Physical materials:

Any materials deposited in the University Library, or in a digital repository established by the University, or in University Schools, becomes the property of the University and will be made available for use on loan and possible copying, in whole or in part, for private study or research unless the author wishes to restrict access. For the avoidance of doubt, the University's ownership will be of the physical or electronic copy of the material, and not of the copyright or any other IP Rights which it contains, unless that otherwise belongs to the University already.

1.2 Non-employed staff

Where an individual works for but is not employed by the University it is important to establish their exact relationship with the University, and it is the responsibility of the staff involved in a project or module to inform Human Resources (Talent and Organisational Development) of any academic visitors, including visitors with honorary titles (for example, Emeritus and/or Honorary Professors) and visiting fellows, students and secondees to the University to enable the University to consider whether any agreements need to be put in place with any third party in relation to the IP rights and obligations of such visitors.

1.2.1 Emeritus and Honorary Staff

The ownership of IP generated for example by Emeritus or Honorary staff (if they are not employees of the University) is determined by their contractual relationship or terms of their appointment with the University. The general principle is that the University will seek to own IP that arises from a project that they are engaged on for the University or which is run through the University or if University facilities have been used to enable the project to take place.

Even if the University does not own IP generated by Emeritus or Honorary staff they will still be supported and thus eligible to receive advice and assistance from the University.

1.2.2 Visiting Staff and Guest Lecturers/Speakers

The ownership of IP generated by Visiting Staff and Guest Lecturers will depend on the nature of their relationship with the University, and the contractual terms upon which they are engaged. If the materials from the guest lecturer or event are to be used after the event, and the IP is not owned by the University, the guest lecturer/speaker or visiting staff member will be asked to provide the University with rights to use the materials .

1.2.3 Visiting Fellows, Researchers and Secondees

As part of research projects and exchange programmes, the University often hosts visiting fellows, researchers and secondees. The ownership of IP created by such persons will be determined by the contractual terms in place between the University, the visitor and the visitor's employer (as applicable). Where such visitors are working on projects together with University staff, it is imperative that IP ownership is agreed and clearly set out before the visit commences.

1.3 Students

Unlike staff, the general principle is that students who are not employed by the University will own any IP they create in the course of their studies or research activities.

However, there can be a number of exceptions to this general principle where the University will need to control and/or protect the IP developed by a student and in such situations, the student will be required to assign their rights in the IP to the University. For example:

- the student has a sponsored studentship under which the sponsor has a claim on the IP arising as part of the terms of the sponsorship;
- the student participates in a research project where any arising IP is to be owned by a third party or the University is required to commit to licensing or exploitation of such IP;
- the student generates IP using the University's facilities and/or resources and it has been agreed by the University that those facilities and resources can be used only on condition that the University owns the IP arising; or
- the student generates IP jointly with an employed member of University staff working in the course of his or her employment.

This list above is illustrative and specific circumstances will need to be examined on a case-by-case basis. If any of the above exceptions apply, the University will discuss the IP position with the student concerned to ensure a mutually acceptable agreement is reached.

Sponsored students and research projects

Where a student is being sponsored by a third party or is carrying out work on a project involving third parties, the student may be required to assign any IP Rights to the University or to the sponsoring body in accordance with the specific terms and conditions which apply to the sponsor or research project. The same requirements may apply if the student is working in an area where the University has valuable IP and/or where arrangements are in place with commercial companies in relation to the results of funded research.

Where necessary, students will be asked to enter into written arrangements to confirm the assignment of IP to the University (in the form of a deed of assignment or a studentship or research agreement). Where a student is unwilling or unable to assign their rights in the IP to the University, they shall not be prevented from registering (unless it is a precondition to receiving funding for payment of their tuition fees that they assign such rights to the University). However, refusing to assign may result in the student being re-assigned to another project or activity with immediate effect to ensure that the University is in compliance with its contractual commitments.

A student who has agreed to assign their Intellectual Property to the University will normally be treated for ownership and reward purposes as though they are employees of the University.

For the avoidance of doubt, students who are also employees of the University, or staff registered for a degree or following a course of study, shall be treated as employed staff for the purpose of this policy.

1.4 Performance rights

Performance rights exist independently of copyright and moral rights in a work. The performer is the first owner of the performance and will have rights in their performance and any recording, film or broadcast of that performance. A performer's rights in a performance are enshrined in Part II of the Copyright, Designs and Patents Act 1988 (CDPA).

A lecturer (employee), student or visiting speaker delivering a lecture will potentially have performance rights in the delivery or 'performance' of the lecture (as distinct from any rights in the content).

Where the performer is an employee of the University, the performance rights are vested in the University by virtue of the employee's **terms and conditions of employment**. Guest speakers/visiting lecturers may be required to assign/license their IP Rights in the performance, as part of the terms of their appointment, to the University if the performance is being recorded by the University.

Students may also have performance rights. Consent will be required from the students to make and disseminate a recording of their performance in order to avoid any infringement of the students' performance rights.

2. Commercialisation and Exploitation

In achieving the University's key ambitions of **World-class Research and Innovation (2020 Strategic Ambition 2)** and **Achieving Resilience, Sustainability and Effectiveness (2020 Strategic Ambition 4)** a significant driver is the University's ability to generate income from the exploitation of its intellectual assets (including its IP) and to focus on satisfying the

market demand for new products, solutions and methodologies. This 'demand-side' model complements the University's 'supply-side' strengths in curiosity-led research and teaching.

Increasingly, to ensure that the University's research funding is sustainable and to complement the more traditional sources of research funding, the University needs to create more diverse research income streams. A more dynamic relationship with external collaborators (whether in industry, commerce or wider society) is the key to unlocking this.

In preparation for this, the University has formally engaged commercialisation specialists Frontier IP Group plc to work strategically in collaboration with the University for the commercialisation of its intellectual assets.

The collaboration provides a cornerstone for the products offered and developed by the University, and supports commercially viable exploitation of the University's IP through licensing and assignment and the creation of spin-outs, as appropriate.

2.1 Disclosure - If you have IP that you wish to be considered for commercialisation.

Members of staff, students, consultants or others who carry out work on behalf of the University or with the benefit of University resources or assets, leading to the relevant IP vesting in or being assigned or licensed to the University (as detailed above), must notify the University of the creation of IP as soon as reasonably possible by completion of a confidential Innovation Disclosure Form. The information given on the form is confidential and is used only for the purpose of review, evaluation, risk management and/or seeking protection of the disclosed IP.

It is through the completion of the Innovation Disclosure Form that the University obtains details of IP, inventors, co-inventors, co-authors and other interested parties, and any restrictions on registration or commercialisation which may be contained in any collaborative agreements or funding conditions imposed by third parties. This then enables the Specialist IP advisors to consider the question of ownership and any barriers to or limitations on the commercialisation or registration (and any resulting impact on the value or ownership) of the IP.

In cases where multiple innovators are identified on the Innovation Disclosure Form or through subsequent discussions, an Originator's Form is available for the relevant individuals and any third parties to complete if they are willing to work with us to commercialise the IP. This then forms a useful starting point to establish an agreement for joint commercialisation as appropriate and the sharing of Net Revenue (as defined below) between those owners.

The Innovation Disclosure Form and the Originator's Form are both available on the IP Matters web-pages. The University's Specialist IP advisors are happy to provide assistance and guidance on how to complete the forms, or to advise on identification, ownership and commercialisation of IP generally.

2.2 Licensing

The University's general policy is to share the net income received when licensing IP Rights to third parties, after deduction of the costs incurred by the University, with the employees who generated the licensed IP. Licensing income will be distributed as set-out below (see

Sharing of benefits) except where any exceptional circumstances apply and/or special arrangements have been made with the faculty with the approval of the relevant Dean.

2.3 Spin-Out Companies

The University supports entrepreneurship and the creation of spin-out ventures as a means of exploiting University IP in certain cases. This support is provided via the Specialist IP advisors (see **Help and Guidance** below) in conjunction with Frontier IP Group plc.

A spin-out venture from the University will always need formal approval by the board of the University of Plymouth Enterprise Limited_(**UoPEL**) after careful consideration of the opportunity and the commercial landscape.

UoPEL is the University's wholly owned trading subsidiary company, which provides a means for University assets to be used for commercial profit. The University shareholdings in any spin-out venture will be held by UoPEL.

Where it has been decided that there is commercial merit in establishing a spin-out, the University would normally take at least a 50% share of the founding shares of the new spin-out company. The University is required to transfer 30% of the University's shares to Frontier IP Group. The academics involved in the project will receive the remaining %.

The appropriate % levels will be considered on a case by case basis, as every situation is different, particularly where there is only one academic involved. Agreement on the eventual equity split will be agreed by the academics and the UoPEL board.

Where there is more than one University employee who has been involved in the creation of the IP, the academics' equity share will be split between the various individuals. The decision on this split must be agreed independently by the relevant individuals and the University will not make, or become involved in this discussion (see **Disclosure - If you have IP that you wish to be considered for commercialisation** above). Any academic who receives a share in the equity in the spin-out company will not be entitled to share in any revenue received by the University from the University's own shareholding.

Furthermore, initial shareholdings may vary where third party rights or joint IP needs to be taken into account – in which case the holder of the joint IP Rights may require a share of the founding equity.

The academics will hold their shares in their own name and will be responsible for their own tax arrangements in relation to those shares and any income derived from them.

2.4 Sharing of benefits

While the University will generally retain the ownership of IP as set out above, it also provides an incentive to staff and students by sharing revenue generated from IP exploitation.

Any net revenue arising from Licensing income will be apportioned in accordance with the sliding scale set out below between the authors/inventor(s), the host faculty, school or directorate and UoPEL. The University reserves the right to adjust the scale and/or withdraw this incentive at its discretion but without effecting any previous legally binding commitment on its part. As above, if third parties are involved as joint owners, these percentages will vary.

	First £25,000	£25,001- £100,000	£100,001- £500,000	Over £500,000
The Originator(s) of the IP	70%	60%	40%	20%
Host Faculty/School/Directorate	10%	20%	30%	40%
UoPEL	20%	20%	30%	40%

In this policy, the Net Revenue means the income received from third parties use of the relevant IP (but not other activities) remaining after the deduction of:

- i) direct costs associated with IP creation, development, protection and exploitation (such as registration fees, legal fees, third party licence fees etc); and
- ii) any share payable to a third party owner of the IP Rights, such as under any royalty, joint ownership or spin-out.

Where there is a payment of Net Revenue due to Frontier IP Group in relation to licensing income, this will not affect the share attributed to staff or students, and is calculated and deducted from the University's and UoPEL's share of the income.

In the case of staff, the Net Revenue from an IP assignment or licence will be paid through salary and be subject to NI and PAYE unless some other form of arrangement has been agreed with the faculty and approved in advance by the Dean.

Further details can be requested via email:

ipmatters@plymouth.ac.uk

2.5 Working with third parties

In every situation where the University or UoPEL is working with a third party, it is essential to consider the IP Rights involved, and to properly document in any agreement the respective ownership, rights and obligations in relation to such IP Rights. Every contract and agreement (including collaboration agreement, consultancy agreement, secondment agreement, sub-contract, agreement for services etc) should include specific provisions relating to IP – even if it is not intended that registrable IP rights will be created from the project. The Legal Services Department can assist you with putting together contracts and with reviewing contracts from third parties. Please see contact details below.

3 Confidentiality

Staff and students should be aware of the importance of maintaining confidentiality in relation to the University's IP Rights and confidential information more generally. Commercially sensitive documents should always be marked as confidential. Before the start of any collaboration with third parties who are not bound by the University's IP policy from which IP may arise, or for which University IP may be used or disclosed, it is essential that the appropriate protection is put in place at the outset in relation to intellectual property and confidential information. As detailed below, the first step in this relationship is to consider the confidential nature of the information being disclosed by all parties and whether a Non-Disclosure Agreement or Confidentiality Agreement is needed (see **Non-Disclosure and Confidentiality Agreements** below).

3.1 Duty of care

The University actively encourages its staff and students to take the initiative to identify innovations and creative output with potential exploitation value or which could otherwise help or enhance the reputation of the University. However, the potential benefits of protecting and exploiting the IP can be very easily and unintentionally lost. For example, the ability to obtain registered IP protection for inventions and designs can be lost by telling people about the idea too early (ie. prior to filing a patent or registered design application). For 'know how' it is the ability to control access to it that will determine whether it will be possible to generate net revenue and commercial value.

When undertaking University work from which IP may be expected to arise all staff and students must:

- keep the nature and all matters relating to the IP confidential until the fact and manner of disclosure is agreed with the University;
- ensure that contracts are put in place with third parties involved in a project involving existing IP or the creation of new IP; and
- assist in protecting the University's rights to the IP by keeping suitable records of its creation (wherever necessary drawing on guidance from the Specialist IP advisors) and co-operating with any registration activity.

3.2 Non-Disclosure and Confidentiality Agreements

Non-disclosure is the most effective way to protect confidential information, sensitive issues and novel ideas. However, where some disclosure is necessary, the usage of Non-Disclosure Agreements or Confidentiality Agreements (NDA) is now common place, and it is the University's policy to use NDAs to regulate and control the disclosure of confidential information. This is essential to protect the University from risk and liability, it also forms the first link in the chain of evidence when considering any future collaborative and/or commercial activity with external parties or exploitation of intellectual property.

The University's Specialist IP Advisors maintain a range of precedent NDAs. These are generally prepared and negotiated through the Specialist IP Advisors (who also maintain a database and record of all NDAs for future reference) or if the NDA relates to a large transaction or sensitive issue, for which other contractual documentation is or may be required, please contact Matthew Jackson or Melissa Rose in the Legal Services Department. For the avoidance of doubt, staff and students are not authorised to enter into or sign NDAs with third parties on behalf of the University.

4 Queries

Any queries in relation to IP Rights should, in the first instance, be directed via email to: ipmatters@plymouth.ac.uk.

5 Further Help and Guidance

The University currently has two Specialist IP Advisors who look after 4 related areas across the University:

- Patent portfolio and its prosecution;
- IP advice; and

- IP Exploitation (commercial and public arena).

IP education. The two IP advisors deliver a range of 'teach-in' sessions on IP, its protection and exploitation across the University. This includes dedicated student sessions as well as smaller sessions that now form part of undergraduate and post graduate programmes.

Help in understanding the issues arising around IP and guidance can be sought from:

Email: ipmatters@plymouth.ac.uk Web: www.plymouth.ac.uk/intellectual-property

Paul Tiltman: Tel: 01752 588335 or paul.tiltman@plymouth.ac.uk

Dr David Mozley: Tel: 01752 588915 or david.mozley@plymouth.ac.uk

For specific help and advice on copyright matters, you can contact Graham Titley - graham.titley@plymouth.ac.uk, the University's Information Specialist, Library & Digital Support (Technology & Information Services).

Further IP assistance is available from the Legal Services Department:

<https://intranet.plymouth.ac.uk/legal/intranet.htm> or:

Matthew Jackson (University solicitor): Tel 01752 588211 or matthew.jackson@plymouth.ac.uk

Melissa Rose (University Legal Officer): Tel: 01752 588232 or melissa.rose@plymouth.ac.uk.

For further information about Data Protection or Freedom of Information, please see:

<https://intranet.plymouth.ac.uk/legal/DPFOI/> or contact:

Emma Wainman (Data Protection and FOI Officer): Tel: 01752 588214 or emma.wainman@plymouth.ac.uk.